August 11, 1988

Nancy Boone, Director
Territorial Liaison
Office of Territorial and International Affairs
Department of Interior
Washington, D.C. 20240

Dear Ms. Boone:

This follows up on our discussion regarding the proposed language to authorize an appropriation of $1.7 million for expansion and improvements to Ordot Landfill. As I indicated to you, I do not believe that is necessary for the authorization to address liability to abate pollution from Ordot.

I understand there is concern that the Department of Interior may somehow be found liable for the costs of pollution control measures and/or pollution cleanup cost. Based on our best information, I do not believe the Department would be found liable for these costs. I believe this for several reasons:

1. In Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) liable parties are defined. In general potentially liable parties are: owners and operators of a site; persons that disposed of or arranged for disposal of hazardous substances at a site; or persons that transported hazardous substances to a site. To our knowledge the Department did not engage in activities with respect to Ordot that would create a liability under CERCLA. In this regard, a responsible party search was completed in January 1987 as part of our remedial investigation and the Department was not indentified as a potential responsible party.

2. It is my understanding that Guam would have primary responsibility for proper use of the $1.7 million. Any liabilities that would arise from use of the $1.7 million would, I think, rest principally with Guam, as they do with other capital improvement projects that are funded in the same manner.

3. We are giving serious consideration to removing Ordot from the CERCLA National Priority List and taking no further action under CERCLA. The primary reason for this

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is that it appears that the pollution problems at Ordot are better addressed by Guam rather than under CERCLA.

For the above reasons I do not feel the Department should be concerned about incurring liabilities regarding pollution control and abatement resulting from Guam's use of the $1.7 million.

If the Department remains concerned about this issue, it seems to me that a more appropriate vehicle to address it is through a grant agreement with Guam rather that an authorization bill. A provision could be included in the funding agreement between the Department and Guam that would absolve the Department of liability associated with the use of the $1.7 million. I believe that addressing this matter in the authorization bill is unnecessary.

Please give me a call if you have any questions.

Sincerely,

Norman L. Lovelace
Chief, Office of Pacific Island and
Native American Programs